

GENO MOORING,)
)
Plaintiff,)
)
v.) No. 4:15-CV-774-JCH
)
TERRA HAWS, et al.,)
)
Defendants.)

This matter is before the Court on the motion of Geno Mooring for leave to commence this action without payment of the required filing fee [Doc. 2].¹ After reviewing plaintiff's financial information, the Court will grant the motion and will assess an initial partial filing fee of \$1.50. Additionally, the Court will order plaintiff to file an amended complaint.

¹ The Court notes that plaintiff Geno Mooring also listed “Latrael Mooring” as a party-plaintiff in the caption of the complaint. Latrael Mooring did not sign the complaint and he has not submitted a motion for leave to proceed in forma pauperis. Moreover, prisoners are not allowed to jointly file civil rights actions, and inmates may not sue on behalf of other inmates, even siblings. For these reasons, the Court will not liberally construe this action as having been brought by Latrael Mooring. If Latrael Mooring wishes to pursue his own civil rights action, he must file a separate complaint and either pay the entire filing fee or move for leave to proceed in forma pauperis, in which case he would also need to submit an inmate account statement.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six-month period. *See* 28 U.S.C. § 1915(b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. *See* 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. *See* 28 U.S.C. § 1915(a)(1),(2). A review of plaintiff's account statement indicates an average monthly deposit of \$7.50. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$1.50, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989); *Denton v. Hernandez*, 112 S. Ct. 1728, 1733 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff’d* 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

The Complaint

Plaintiff, an inmate at the Missouri Eastern Correctional Center (“MECC”), seeks monetary relief in this 42 U.S.C. § 1983 action against MECC employees Terra Haws, Cody Umfress, and Michael Doughtry. Plaintiff asserts Eighth and Fourteenth Amendment claims against defendants for injuries he and his brother

sustained in October 2014. Defendants are being sued in their individual capacities.

Discussion

Prisoners are not allowed to jointly file civil rights actions, and inmates may not sue on behalf of other inmates, especially where there could be an incentive to avoid paying separate filing fees. Because plaintiff is proceeding pro se and in forma pauperis, the Court will give him an opportunity to file an amended complaint in this action. In so doing, plaintiff should select the transaction or occurrence he wishes to pursue, in accordance with Rules 18 and 20 of the Federal Rules of Civil Procedure, and file an amended complaint, limiting his facts and allegations to the defendant(s) involved in said occurrence. Plaintiff should only include in his amended complaint those claims that arise out of the same transaction or occurrence, or simply put, claims that have some relation to each other. *See* Fed.R.Civ.P. 20(a)(2). Alternatively, plaintiff may choose to select one defendant and set forth as many claims as he has against that single individual. *See* Fed.R.Civ.P. 18(a).

Moreover, plaintiff is advised that all claims in an action must be included in one, centralized complaint form, as neither the Court nor defendants wish to search through supplemental and prior pleadings in order to piece together plaintiff's

claims. As such, plaintiff is warned that the filing of an amended complaint replaces the original complaint, supplement, and all previously-filed pleadings, and therefore, he must include each and every one of the claims he wishes to pursue in the amended complaint. *See, e.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Any claims and/or party-defendants from the original complaint, supplement, and/or pleadings that are not included in the amended complaint will be deemed abandoned and will not be considered. *Id.* Plaintiff is advised that the amended complaint will replace the original complaint and will be the only pleading this Court reviews. *See, e.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). If plaintiff wishes to sue defendants in their individual capacities, plaintiff must specifically say so in the amended complaint.

Plaintiff is reminded that he is required to submit his amended complaint on a court-provided form, and it must comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Specifically, in the "Caption" of the form complaint, plaintiff shall set forth the name of each defendant he wishes to sue; and in the "Statement of Claim," plaintiff shall start by typing the first defendant's name, and under that name, he shall set forth in separate numbered paragraphs the allegations supporting

his claim(s) as to that particular defendant, as well as the right(s) that he claims that particular defendant violated. If plaintiff is suing more than one defendant, he shall proceed in this manner with each of the named defendants, separately setting forth each individual name and under that name, in numbered paragraphs, the allegations specific to that particular defendant and the right(s) that he claims that particular defendant violated. **Plaintiff is instructed not to attach any exhibits to the amended complaint.**

The amended complaint must contain short and plain statements showing that plaintiff is entitled to relief, the allegations must be simple, concise, and direct, and the numbered paragraphs must each be limited to a single set of circumstances. If plaintiff needs more space, he may attach additional sheets of paper to the amended complaint and identify them as part of the "Caption" or "Statement of Claim." Because the Court is allowing plaintiff to amend his complaint, it will take no action as to the named defendants at this time.

Last, if plaintiff wishes to pursue additional claims against additional defendants, and the claims do not arise from the same transaction or occurrence he has chosen to advance in his amended complaint, he must file each such claim(s) on a separate complaint form and either pay the entire filing fee or file a motion for leave to proceed in forma pauperis.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. 2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall pay an initial partial filing fee of \$1.50 within thirty (30) days from the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that plaintiff shall submit an amended complaint, in accordance with the instructions set forth in this Memorandum and Order, no later than thirty (30) days from the date of this Memorandum and Order, and his failure to do so will result in the dismissal of this action without prejudice and without further notice.

IT IS FURTHER ORDERED that the Court shall mail to plaintiff a blank form for the filing of a prisoner civil rights complaint. Plaintiff may request additional forms from the Clerk, as needed.

Dated this 1st day of September, 2015.

 /s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE